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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/465,298	12/17/1999	DARRYL FRANKLIN CLARK	14543	8717

23556 7590 04/21/2003

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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT PAPER NUMBER

1771

DATE MAILED: 04/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/465,298

Applicant(s)

CLARK ET AL.

Examiner

Jenna-Leigh Befumo

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 7-23 is/are pending in the application.
- 4a) Of the above claim(s) 18-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 7-9 is/are rejected.
- 7) ☒ Claim(s) 10-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Amendment B, submitted as Paper No. 10 on February 5, 2003, has been entered. Claims 7 – 17 have been amended. Therefore, the pending claims are 1 – 3 and 7 – 23. Claims 18 – 23 are withdrawn from consideration as being drawn to a nonelected invention.
2. The Applicant's arguments (Amendment B, page 4) are sufficient to overcome the 35 USC 103 rejection of claim 16 based on Lickfield et al. (EP 0754796 A1) and Krueger et al. (4,729,371), since these references fail to teach or fairly suggest using multiple meltblown layers wherein one meltblown layer is made from monocomponent fibers and another meltblown layer is made from bicomponent fibers.
3. The Applicant's arguments (Amendment B, pages 5 – 6) are sufficient to overcome the 35 USC 103 rejection to claims 10 and 17 based on Lickfield et al., Krueger et al., and Aishima et al. (3,900,678) since Aishima et al. fails to teach or fairly suggest using the bicomponent fibers as a meltblown bicomponent fiber. And while Lickfield et al. suggests bicomponent fibers can be used in the composite fabric, Lickfield et al. fails to explicitly teach that the meltblown layer is made from bicomponent fibers. Therefore, there would be no reason to use the bicomponent fiber taught by Aishima et al. in the meltblown layer taught by Lickfield et al.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1 – 3 and 7 – 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lickfield et al. in view of Krueger et al. for the reasons of record.

Response to Arguments

6. Applicant's arguments filed February 5, 2003 have been fully considered but they are not persuasive. The Applicant argues that it is insufficient to presume that the combination of Lickfield et al. and Krueger et al. would have the properties claimed by the Applicant (Amendment B, pages 3 – 4). The Applicant cites MPEP § 2112 and *In re Robertson* to argue that extrinsic evidence must make clear that the missing descriptive matter is present. However, *Robertson* is drawn to a situation where the prior art did not disclose a physical component claimed by the Applicant and not a situation where a property was presumed to be inherent. In *Robertson* the claims were drawn to a diaper having three fasteners while the prior art applied only explicitly taught using two fasteners. This is not similar to the present situation.

With respect to situations where the Applicant claims properties which are not taught by the prior art, MPEP § 2112.01 states when the structure recited in the references is substantially identically to that of the claims, claimed properties or functions are presumed to be inherent. Thus, the properties are presumed to be inherent since the prior art and the claimed structure are substantially identical. Thus, the properties are properly presumed to be present in the combination of Lickfield et al. and Krueger et al., as previously set forth. The applicant has the burden of showing that they are not. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). However, the Applicant's argument that the properties are not explicitly taught by the prior art is not sufficient to establish that the properties are not present in the prior art. Therefore, the rejection is maintained.

7. Further, the Applicant argued that since Krueger et al. teaches that the meltblown fabric is molded than the combination of Lickfield et al. and Krueger et al. would not teach the claimed

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structure since a molded structure would not have a softness or drape that would produce the claimed cup crush energy (Amendment B, pages 3 – 4). However, Krueger et al. is not relied to teach bonding or shaping the fabric of Lickfield et al., but instead is relied on to teach that meltblown bicomponent fibers have better properties than monocomponent meltblown properties. This teaching is used to establish it would be obvious to substitute bicomponent fibers for the monocomponent fibers in the meltblown layer taught by Lickfield et al. The method of producing the product taught by Lickfield et al. is not changed because the meltblown fiber is a bicomponent and not a monocomponent. Thus, there was no suggestion that the product in Lickfield et al. needs to be molded as the product in Krueger et al. Additionally, it is noted that the meltblown fabric taught by Krueger et al. would be present in a soft and drapeable state prior to molding. And therefore, even if the combination did suggest that the final product must be molded or shaped, prior to being molded, the nonwoven laminate would have the same softness and drape properties as those of the product recited in the claims. Therefore, the rejection is maintained.

Allowable Subject Matter

8. Claims 10 – 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter:

10. Claims 11 – 15 are indicated as allowable for the reasons set forth in section 11 of the previous Office Action.

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11. Claims 10 and 17 are indicated as allowable since the prior art fails to teach or fairly suggest using the specific bicomponent fiber, having a first component comprised of propylene polymer with a crystallinity of above 70 J/g and a second component comprised of an amorphous polyalphaolefin polymer with a crystallinity below about 65 J/g used in the meltblown layer of spunbond-meltblown-spunbond bicomponent. While the specific bicomponent fiber is known, the prior art does not teach that this fiber is used as a meltblown fabric layer in nonwoven laminates having spunbond layers and meltblown layers made from bicomponent fibers.

12. Claim 16 is indicated as allowable since while the prior art does teach using multiple meltblown layers together, the prior art fails to teach or fairly suggest using a combination of meltblown layers where one layer comprises monocomponent fibers and one layer comprises bicomponent fibers.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

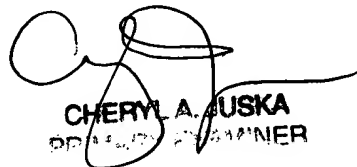
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (9:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo
April 9, 2003



CHERYL A. HUSKA
DEPUTY EXAMINER